

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BLUE SPIKE, LLC, §
§
Plaintiff, § CIVIL ACTION NO.
§
VS. § 6:12-CV-00499-MHS
§
TEXAS INSTRUMENTS, INC. §
§
Defendant. §

BLUE SPIKE, INC., §
§
Plaintiff, §
§
VS. §
§
AUDIBLE MAGIC CORPORATION, §
FACEBOOK, INC., MYSPACE, §
LLC, SPECIFIC MEDIA, LLC, §
PHOTOBUCKET.COM, INC., § CIVIL ACTION NO.
DAILYMOTION, INC., §
DAILYMOTION S.A., SOUNDCLOUD § 6:12-CV-00576-MHS
INC., SOUNDCLOUD LTD., MYXER, §
INC., QLIPSO, INC, QLIPSO §
MEDIA NETWORKS, LTS, YAP.TV §
INC., GOMISO, INC., IMESH, §
INC., METACAFE, INC., §
BOODABEE TECHNOLOGIES INC., §
TUNECORE, INC., ZEDGE §
HOLDINGS, INC. BRIGHTCOVE §
INC., COINCIDENT TV INC., §
ACCEDO BROADBAND NORTH §
AMERICA, INC., ACCEDO §
BROADBAND AB, and MEDIAFIRE, §
LLC, §
Defendants. §

CONFIDENTIAL - OUTSIDE COUNSEL EYES ONLY

ORAL AND VIDEOTAPED DEPOSITION OF
RODNEY JAMES BOSCO
June 3rd, 2015

1 ORAL AND VIDEOTAPED DEPOSITION OF RODNEY
2 JAMES BOSCO, produced as a witness at the instance
3 of the Defendant Audible Magic, and duly sworn, was
4 taken in the above-styled and numbered cause on the
5 3rd of June, 2015, from 9:02 a.m. to 5:53 p.m.,
6 before Daniel J. Skur, Notary Public and Certified
7 Shorthand Reporter in and for the State of Texas,
8 reported by stenographic means, at the offices of
9 Garteiser Honea, 218 North College Avenue, Tyler
10 Texas, pursuant to the Federal Rules of Civil
11 Procedure.

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15 The following 6 pages of deposition
16 transcript discuss confidential financial
17 information and our not filed publicly
18 pursuant to the Court's Protective Order.
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1 operations of Blue Spike for all years previous to
2 2012.

3 Q. And do you have an understanding
4 qualitatively what the net operations of Blue Spike
5 were prior to 2012?

6 A. What do you mean by "qualitatively"?

7 Q. I'm not looking for a number. I just
8 want to know what those operations were.

9 MR. GARTEISER: Objection, form.

10 A. My understanding was it had to do with
11 costs to conduct business, develop the patents,
12 license, in this case would have been the RPX
13 agreement, basically all the same operations that
14 were carried out in 2012, '13, '14 with the
15 exception there probably wasn't any legal -- well,
16 there were legal costs. There probably weren't any
17 litigation-related costs in those earlier years
18 that I'm aware of. That's my understanding.

19 BY MS. CARIDIS:

20 Q. Do you have any understanding of whether
21 the existing debt reflected in Exhibit 70 has any
22 relation to the asserted patents in this case?

23 A. My understanding was that it includes
24 costs associated with developing and prosecuting
25 and maintaining the patents, the four patents and

1 other patents.

2 Q. In paragraph 16 of your rebuttal report,
3 you note that, quote: Blue Spike contends that its
4 disclosure's reliable and sufficient for the
5 purpose of evaluating Audible Magic's allegations
6 of unjust enrichment.

7 Do you see that?

8 A. Yes.

9 Q. What support do you have for that
10 statement?

11 A. The representations of Blue Spike's
12 counsel.

13 Q. Did you talk to any employee or
14 accountant of Blue Spike to confirm the reliability
15 and sufficiency of the financial information
16 reflected in Exhibit 70?

17 MR. GARTEISER: Objection, form.

18 A. I did not talk to anybody at -- well, I
19 had a conversation that included Scott, but in
20 essence -- but really he was -- well, yes, I had a
21 conversation with Scott in which I was advised that
22 he instructed individuals within his organization
23 to prepare the document that you see here that
24 would focus on those revenues and expenses relating
25 to Blue Spike, Inc. and Blue Spike LLC as opposed

1 to other entities owned by Mr. Moskowitz. And
2 further, I -- it's -- I have been advised by
3 counsel for Blue Spike that there -- and I think
4 I've mentioned this, there have been discussions
5 with the special master regarding this topic, and
6 it's Blue Spike's counsel's view that this
7 production is sufficient, and I understand that
8 Audible Magic doesn't necessarily agree with that,
9 but that's the basis for the statement.

10 BY MS. CARIDIS:

11 Q. Based on your 30 years of experience in
12 reviewing financial records of commercial
13 businesses, would you, Mr. Bosco, expect a business
14 like Blue Spike to have more financial records than
15 what's shown in a single piece of paper of Exhibit
16 70?

17 MR. GARTEISER: Objection, form.

18 A. Well, I would expect there to be
19 additional records that would feed into these
20 documents, but the question -- and it's not
21 really -- I mean, I understand that experts always
22 want more, but I think the question here is whether
23 the special master has ruled or made a judgment
24 that this documentation is sufficient for the
25 purposes for which it's being applied, and I don't

1 have an opinion on that. That's my understanding
2 of where things stand in terms of how this document
3 should or should not be used.

4 BY MS. CARIDIS:

5 Q. You've never seen a document from the
6 special master relating to any of this sufficiency
7 of financial disclosures, correct?

8 MR. GARTEISER: Objection, form.

9 A. I haven't seen a transcript or anything
10 like that.

11 BY MS. CARIDIS:

12 Q. Sure. So -- and I understand that
13 that's what you've been told by counsel, but
14 putting that special master hypothetical discussion
15 aside, would you believe under the confines of the
16 language from the court in this case that Blue
17 Spike was required to produce all of its financial
18 documents, that there would be additional financial
19 documents that would feed into the summary provided
20 in Exhibit 70 --

21 MR. GARTEISER: Object --

22 BY MS. CARIDIS:

23 Q. -- as an expert with 30 years of
24 experience in studying the financial documents of a
25 company?

1 MR. GARTEISER: Objection, form.

2 A. I mean, it's obvious that any number
3 that appears in a summary like this is comprised of
4 additional numbers. But, again, I -- you know, I
5 don't want to get in the middle of this. We always
6 want more, but my understanding is that this is
7 sort of a battle ground between the parties in
8 terms of whether this is a sufficient production
9 and whether it is appropriate for Audible Magic to
10 seek documents from either Mr. Moskowitz or
11 companies owned by Mr. Moskowitz which may end up
12 being the -- used or a source or somehow
13 contributed to the production of this, so I don't
14 weigh in on that at all.

15 BY MS. CARIDIS:

16 Q. I understand.

17 A. And so -- and that's the salient issue
18 here. I didn't -- I can't weigh in on the
19 sufficiency of this document because I think it's
20 predicated on -- on the opinion of the court.

21 Q. Sure. So opinion of the court and the
22 requirement of production aside, as a expert with
23 30 years of experience in the financial documents
24 of commercial businesses, would you expect that
25 Blue Spike could have prepared a more detailed

1 financial disclosure than what is shown in Exhibit
2 70?

3 MR. GARTEISER: Objection, form.

4 A. I don't have knowledge of their
5 accounting systems. I assume that it's possible.
6 You know, without knowing their chart of accounts,
7 I literally don't know what additional level of
8 detail could be provided. I would expect that
9 there is some level of detail, but the
10 accessibility of that and whether such disclosure
11 is something that the court would require Blue
12 Spike to produce, I don't know.

13 BY MS. CARIDIS:

14 Q. I understand. Thank you. Are you aware
15 of Blue Spike, Inc. or Blue Spike LLC making any
16 patent-specific investments related to the asserted
17 patents in this case?

18 A. My understanding is that there were
19 efforts made by Blue Spike to create the patents
20 and prosecute the patents and maintain the
21 patents-in-suit.

22 Q. So aside from patent prosecution,
23 activities, and expenses, are you aware of Blue
24 Spike, Inc. or Blue Spike LLC making any
25 patent-specific investments relating to the